



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,394	07/23/2003	Alexander Carbonell	LDP-7894	9096
7590 Alexander Carbonell P.O. Box 450133 Miami, FL 33145			EXAMINER FRANCIS, FAYE	
			ART UNIT 3725	PAPER NUMBER

DATE MAILED: 09/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/625,394

Applicant(s)

CARBONELL, ALEXANDER

Examiner

Faye Francis

Art Unit

3725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7/23/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-2, 6-8 and 20-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Mueller [US 2004/0159727].

Mueller discloses in Figs 1-3, a homogenizer comprising: a cylinder [vessel 5] for holding a product, the cylinder having a base [Fig 2], an axis, axle [shaft 6], a blade 7a and 7b connected to the axle more than a de minimis height, the blade inherently can be above the product when the cylinder is stationary and the blade contacting the product when the cylinder axially reciprocated [see sub sections 0020-0022], a removable cap 3

The method steps recited in claims 20-21 would be met during the normal operation of the apparatus disclosed by Severson. They are inherent method of use of the Mueller device.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mueller.

Mueller discloses the claimed invention except for a motor, a battery and a switch. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of Mueller with the missing elements, since it has been held that broadly providing a mechanical or automatic means to replace manual activity which, has accomplished the same result involves only routine skill in the art. In re Venner, 120 USPQ 192.

5. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mueller.

Mueller discloses most of the elements of this claim but for a blade disposed one half of the distance from the base. However, Mueller discloses that the device may be provided with additional blades if necessary [subsection 0020]. It would have been obvious to provide the device of Mueller with additional blades disposed along the shaft including one half of the distance from the base in order to increase efficiency of the device.

6. Claim 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mueller in view of Forsyth [5,938,129].

Art Unit: 3725

Mueller discloses most of the elements of these claims but for a removable mesh.

Forsyth cited to show desirability, in the relevant art, to provide a rotary mill with a mesh [screen assembly 22] in order to separate the milled product. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the device of Mueller with the mesh as taught by Forsyth in order to separate the milled product.

Additionally, the limitations of these claims would have been obvious modifications by one skilled in the art once the basic apparatus was known. For example the use of the mesh in a milling device is well known in the art and of no patentable merit. Furthermore, Any remaining limitations not disclosed in the reference would then have been obvious design choice, as they solve no stated problem and of no patentable merit [note the applicant discloses on page 13 line 9 that indicate the lack of criticality of these limitations in the present invention].

7. Claims 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mueller in view of WO 9201515 A1, hereinafter WO'515.

Mueller discloses most of the elements of these claims as stated above but for a container connected to the base and the base having a tube for connecting the cylinder to the container.

WO'515 teaches that it is conventional in a portable crushing device to have a secondary container [disposable receptacle 23] to be attached to the main structure via a tube [chute 15] in order to dispose the material after being crushed. It would have

Art Unit: 3725

been obvious to one of ordinary skill in the art at the time the invention was made, in view of WO'515 to provide the device of Mueller with the missing elements in order to dispose or store the material after being crushed.

Any remaining limitations not disclosed in the reference would then have been obvious design choice, as they solve no stated problem and of no patentable merit.

8. Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mueller in view of Dancyger [6,213,268].

Mueller discloses most of the elements of these claims as stated above but for a purse comprising a pocket and a strap.

Dancyger teaches the concept of providing a tool holder with a purse 10 comprising a pocket [flap 34] and a strap 64a to carry the tool from one place to another [see the abstract]. It would have been obvious to provide the device of Mueller with the purse comprising a pocket and a strap as taught by Dancyger in order to carry the device from one place to another.

### ***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Faye Francis whose telephone number is 571-272-4423. The examiner can normally be reached on M-F 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 571-272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3725

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

FF



Faye Francis  
Primary Examiner  
Art Unit 3725